

In re David R. Cheriton, Application No. 09/981,125
Amendment B

REMARKS

The final Office action dated March 30, 2006, and the references cited have been fully considered. Even though this matter is after mailing of an Office action marked as final, Applicant requests the amendment to the specification be entered as it is intended to make sure that the definition of computer-readable medium is defined consistent with common usage and the MPEP, and requests the listing of the claims be entered as it does not change any claim, but rather just represents the pending claims in non-marked-up format, and to ensure that the claims presented in Amendment A are made of record. Reconsideration and/or further prosecution of the application is respectfully requested.

Applicants appreciate the notification that claims 1, 6, 8-11, 13 and 22 are allowed.

First, Applicants note that the Office failed to comply with at least MPEP § 707.07(i) by failing to mentioning all pending claims. More specifically, dependent claims 29-33 were added in Amendment A, but not addressed in the Office action mailed March 30, 2006. (Applicant notes that claims 29 and 30 depend from allowed independent claim 1, and dependent claims 31-33 depend from allowed independent claim 22.) Therefore, Applicant requests the entire Amendment A be entered, and requests the withdrawal of the March 30, 2006, Office action, and a new Office action or Notice of Allowance be mailed to Applicant.

Next, Applicant traverses the marking of the Office action as final, as the Office failed to meet its initial burden of presenting a *prima facie* case of a proper rejection of all claims in the first Office action, and therefore Applicant had no burden of proof of disproving any application of a cited reference against a claim. *See, In re Warner*, 379 F2d. 1011, 1016, 154 USPA 173, 177 (C.C.P.A. 1967); *Ex parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). The Office failed to address each and every claim limitation in the first Office action, and therefore failed to present even a *prima facie* case of a proper rejection of independent claims 15 and 23. The Office changed its rejection of these claims in the March 30, 2002, Office action. Pending claims 15 and 23 stand as originally filed. No new information disclosure statement was filed. Therefore, the Office's new grounds of rejection was neither necessitated by Applicant's

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amendment nor based on information submitted in an IDS filed after the first Office action. Therefore, it is improper to make the next Office action final per MPEP § 706.07(a). Applicants request a reconsideration of the finality of the Office action, and request it be withdrawn, such as, but not limited to being based on MPEP § 706.07(a) and/or MPEP 706.07(d).

Next, Applicants believe the final Office action fails to comply with MPEP as it fails to respond to Applicant's arguments in regards to, and traversal of the § 103 rejections made in the first Office action. (These arguments were presented on page 12 of Amendment A).

Next, Applicant requests the statement of rejections in the Office action be complete and with clarity pursuant to MPEP § 707.07. The Office action often references a figure and elements thereof. Applicants thank the Office for explicitly pointing out the figure number and specific reference numbers. However, when the Office action cites a figure and elements (e.g., FIG. 1, elements 101 and 102) of a block diagram for performing some function, the figure does not illustrate this function. Applicants merely request the Office cite the specific text of the reference (e.g., col. xx, lines x-y), so that Applicants can readily understand to what the Office is trying to communicate to Applicant.

Again, Applicant points out that the Office cites the wrong patent number for Pitcher et al. in regards to the § 103 rejections.

Finally, as the Office failed to fully consider Amendment A, Applicant hereby incorporates by reference all remarks made therein.

Moving forward, Applicant appreciates the Response to Arguments presented on page 6 of the Office action mailed March 30, 2006. In fact, these arguments support Applicants position that the reference neither teaches nor suggests all the claim limitations. The Office explicitly states that it is selector 119 which selects one of modules 101 and 102. Therefore, selector 119 receives the particular packet from both modules 101 and 102, and it is not modules 101 and 102 that filter packets. As the Office action equates the first and second configurable filters to be module 101 and 102, then the Office would need to show that modules 101 and 102 perform the recited filtering to be consistent with the application of the reference to the claims. (Remember,

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original independent claim 15 recites "wherein when the first and the second configurable filters are in their respective normal operating states: a particular packet is forwarded only by one of the first and the second configurable filters and both the first and second configurable filters are configured to forward at least one packet," and original independent claim 23 recites "wherein a particular packet is forwarded only by one of the first and the second configurable filters and both the first and second configurable filters are configured to forward at least one packet.") In contrast, modules 101 and 102 both forward each particular packet, and therefore, neither teach nor suggest all the recited claim limitations.

Again, Merchant et al. operates in a full-redundancy capability where all packets are forwarded to both of switch modules 101 which when both are functioning properly operate exactly in the same manner, and selector 119 is simply used to select one of the outputs of a switching module 101. Merchant et al., col. 3, lines 25-37 and lines 56-60. Especially note that the cells are "dual fed" and these switch modules are redundant such that the "cell contents of the N queues in each of buffer memory and control units 126 and 127 of switch modules 101 and 102 respectively, should be identical."

For at least these reasons, the Office action fails to present a *prima facie* case of a proper rejection of independent claim 15 and its dependent claims 16-21, and independent claim 23 and its dependent claim 24-27.

As all other claims stand allowed or depend from previously allowed claims, Applicant respectfully requests that all rejections be withdrawn, all claims be allowed, and the application be passed to issuance.

Although Applicant has successfully traversed the rejections of all pending claims, Applicant will address a few other statements in the Office action.

Again in regards to the § 103 rejections, Applicant notes that the Office cites the wrong patent number for Pitcher et al., and Applicant has already traversed the rejections of the independent claims. Furthermore, Applicant respectfully traverses the combination presented in the Office action of Merchant et al. with Pitcher et al. First, such a combination does not make

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sense if one thinks about the semantics of the operation of Merchant et al., which is concerned with full redundancy and every packet is forwarded through multiple switch modules (101, 102) and when there is no error, selector 119 simply selects either of the paths (typically the primary path of switch module 101). Making selector 119 responsive to a value contained in a packet makes no sense as if both switch modules 101, 102 are functioning properly, then selector 119 selects either of them, and if one of them fails, selector 119 wants to select the correctly working switch module, not one based on a value contained in a packet, which would render Merchant et al. unsatisfactory for its intended purpose of redundancy. Thus, such a rejection conflicts with MPEP § 2143.01(V). Moreover, the motivation stated is non sequitur as the switch modules 101 102 of Merchant forward all packets to selector 119. Finally, load balancing performed such that switch modules 101 and 102 only process one-half the traffic would render Merchant et al. unsatisfactory for its intended purpose of redundancy, in conflict with MPEP § 2143.01(V), as discussed *infra*. For at least these reasons, Applicant further traverse the § 103 rejections of claims 19-21 and 24-27.

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Final Remarks. Applicants believe that no additional fees are due, nor is an extension of time required, in connection with this paper. If any such fee or extension of time is required, Applicant petitions for such extension of time, and authorizes the charging of Deposit Account 501430 for any fee due in connection with this paper.

In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, Applicant requests any and all rejections and/or objections be withdrawn, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicant is open to discussing, considering, and resolving issues in order to further prosecution.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By


Kirk D. Williams, Reg. No. 42,229
One of the Attorneys for Applicant
CUSTOMER NUMBER 26327
The Law Office of Kirk D. Williams
1234 S. OGDEN ST., Denver, CO 80210
303-282-0151 (telephone), 303-778-0748 (facsimile)